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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,545	03/17/2004	Masaei Tsurumaki	042195	2325

38834 7590 04/12/2006

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EXAMINER

PASSANITI, SEBASTIANO

ART UNIT PAPER NUMBER

3711

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/801,545

Applicant(s)

TSURUMAKI ET AL.

Examiner

Sebastiano Passaniti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01/31/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 10 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/31/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

This Office action is responsive to communication received 01/31/2006 –  
Amendment.

Claims 1-13 remain pending.

Claims 6-9, 12 and 13 remain withdrawn from further consideration.

Following is an action on the MERITS:

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#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 10 STAND rejected under 35 U.S.C. 102(b) as being anticipated by Kosmatka. Reference is made to Figure 6 and the elastically deformable portion (30) shown as being disposed in the vicinity of the end portion of the face portion (34). The area directly behind portion (30) in either the sole or the crown, which is fashioned to be thicker in dimension than the channel (3), may clearly be considered to be a high rigidity portion. Specific to claim 2, the elastically deformable portion and the high rigidity portion are located in the sole. As to claim 10, the elastically deformable portion (30) is clearly shown to include an arch-shaped groove. The language added to claim 1 and reading “and for restoring elastic deformation with repulsion force close to

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explosiveness" does not add any further structure to the claim and is merely deemed to be functional in nature.

***Allowable Subject Matter***

Claims 3, 4, 5 and 11 STAND objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. A further explanation regarding a reason for the indicated allowability of these claims will be presented at such time as the application is placed in condition for allowance.

***Response to Arguments***

In the arguments received 01/31/2006, the applicant contends that the prior art reference to Kosmatka fails to disclose or teach the combination of "the elastically deformable portion" and "the high-rigidity portion".

In response to these arguments, it is noted that the claim language (claim 1) does not preclude a thickened portion of the sole itself being able to serve as the "high-rigidity portion". In this case, Kosmatka clearly shows an elastically deformable portion (30) shown as being disposed in the vicinity of the end portion of the face portion (34). The area directly behind portion (30) in either the sole or the crown, which is fashioned to be thicker in dimension than the channel (3), may clearly be considered to be a high rigidity portion. Again, there is nothing in the claim that defines a predetermined thickness for the entirety of the sole and the addition of a high-rigidity portion that is distinct from the sole and disposed on the sole directly adjacent the elastically deformable portion.

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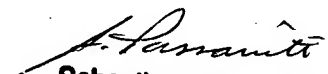
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sebastiano Passaniti whose telephone number is 571-272-4413. The examiner can normally be reached on Monday through Friday (6:30AM - 3:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.Passaniti/sp  
April 10, 2006

  
**Sebastiano Passaniti**  
Primary Examiner

